

Respondent's application for review raises the following issues: (1) whether the claimant has made a good faith effort to find appropriate employment; and, (2) the nature and extent of claimant's disability. The respondent neither filed a submission letter with the Administrative Law Judge nor a brief with the Board. Therefore, the Board does not have

the benefit of respondent's arguments and contentions concerning the issues raised in the application for review.

Claimant requests the Administrative Law Judge's decision be affirmed.

FINDINGS OF FACT & CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' stipulations, the Board finds that the Award should be affirmed.

The Board agrees with, and adopts as its own, the findings and conclusions set forth in the Award. The Board affirms the Administrative Law Judge's conclusions that claimant made a good faith effort to find employment and met his burden of proof to establish a 76.5 percent work disability.

The evidentiary record in this case is limited to the regular hearing proceedings and the deposition testimony of Dr. Drazek.

The claimant's uncontradicted testimony at regular hearing was that after he returned to work following treatment he advised respondent that working on larger machines was causing increased pain and the work was outside his restrictions. The respondent failed to provide accommodation. Claimant was terminated after he requested accommodation and additional treatment. After he was terminated, the claimant sought employment and submitted approximately 175 employment applications to various companies. Uncontradicted evidence which is not improbable or unreasonable will not be disregarded unless it is shown to be untrustworthy. *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

The claimant has established that after attempting to work within his medical restrictions he experienced increased symptoms and was terminated after he sought accommodation and treatment. Where the accommodated job is not within the medical restrictions or where the worker is fired after attempting to work within the medical restrictions and experiences increased symptoms an award of a work disability is appropriate. *Bohanan v. U.S.D. No. 260*, 24 Kan. App.2d 362, 947 P.2d 440 (1997); *Guerrero v. Dold Foods, Inc.*, 22 Kan. App.2d 53, 913 P.2d 612 (1995).

Dr. Drazek was the only physician that proffered an opinion in this case. Jerry Hardin, a human resource consultant, had prepared a list of the claimant's work tasks for the 15-year period preceding the accident. Dr. Drazek reviewed the list and based on her restrictions concluded the claimant had sustained a 53 percent task loss. Because the claimant made a good faith effort to find employment, the wage loss component of his work disability would be the difference between his pre- and post-injury wage based on his actual wages. *Copeland v. Johnson Group, Inc.*, 24 Kan. App.2d 306, 944 P.2d 179

(1997). The claimant had not succeeded in finding employment at the time of the regular hearing and his wage loss would be 100 percent. Combining the wage loss and the task loss, the claimant has a 76.5 percent work disability.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Jon L. Frobish dated February 16, 2001, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of June 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

pc: Mark T. Schoenhofer, Attorney, Wichita, Kansas,
James A. Cline, Attorney, Wichita, Kansas
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director